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JAN 28 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 28, 1999

2398.001

By Hand

Ms. Magalie Roman-Salas, Esq.
Secretary
Federal Communications Commission
1919 M. St. N.W., Room 222
Washington, D.C. 20554

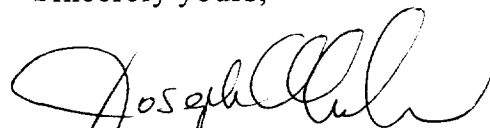
**Re: In re: Reexamination of Comparative
Standards for Noncommercial Educational Applicants
Further Notice of Proposed Rulemaking
MM Docket No. 95-31
*Comments of Cedarville College***

Dear Ms. Roman Salas:

Enclosed please find an original and (4) four copies of Comments filed in the above-captioned proceeding on behalf of Cedarville College. Under separate cover, a diskette copy is being delivered to Irene Bleiweiss in the Mass Media Bureau.

Please call with any questions you may have.

Sincerely yours,


Joseph C. Chautin, III

JCC,III:gp

Enclosures

cc: Paul Gathany (w/out encl)

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	MM Docket 95-31
)	
Reexamination of the Comparative)	
Standards for Noncommercial)	
Educational Applicants)	
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COMMENTS OF CEDARVILLE COLLEGE

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Its Counsel

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In the Matter of)	MM Docket 95-31
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COMMENTS OF CEDARVILLE COLLEGE

The Board of Administrators of Cedarville College ("Cedarville") hereby submits its comments on the Commission's *Further Notice of Proposed Rulemaking* ("Further Notice") in the above-captioned proceeding.¹ Cedarville, originally founded in 1887, is a private, post-secondary educational institution located in Cedarville, Ohio. Cedarville is the licensee of and operates the following non-commercial educational radio broadcast stations: WCDR, Cedarville, Ohio; WOHC, Chillicothe, Ohio, and WOHP, Portsmouth, Ohio. Cedarville has a pending, competing application for Channel 218 in Columbus, Ohio, originally filed in 1993. Cedarville currently has on file with the Commission a state-wide network plan in accordance with 47 C.F.R. §73.502.² Like other private

¹ *Further Notice of Proposed Rulemaking*, MM Docket 95-31, FCC 98-269 (released October 21, 1998).

² Cedarville submitted its state-wide plan to the Commission twice in 1993 - once as an amendment to its Columbus, Ohio Class A FM application, and again as a separate filing. For the Commission's convenience, a copy of the plan is attached hereto as Exhibit "A." Section 73.502 of the Commission's rules requires the Commission to take into consideration, when assigning a channel for a NCE FM

educational institutions in America, Cedarville utilizes NCE radio spectrum to advance its educational goals.

I. Summary

Cedarville's comments seek to preserve, at every opportunity, the integrity of the noncommercial, educational licensing process for the ultimate benefit of the public for whom the reserved spectrum was originally set aside. In the context of any system that would select the best applicant from among competing applicants, Cedarville proposes that the Commission place private educational institutions like itself on equal footing with state or other government and/or municipal entities whose state-wide plans would entitle applicants that are part of such plans to receive credits in a point system awarding NCE licenses.³ As explained below, the benefit of according private educational entities equal treatment in establishing statewide networks is that different, and naturally more diverse, educational and cultural views, would be propounded, and the public would be served by, and be able to choose from, the programming offerings of different NCE licensees. Cedarville therefore proposes that the additional factor suggested by the Commission that would award points to applicants whose stations would be part of an

station to one of several competing applicants for that channel, the extent to which the application meets the requirements of a state-wide plan for NCE FM stations on file with the Commission.

³ In making this proposal, Cedarville assumes that public educational institutions, typically supported by state funds, would already be included in the Commission's proposed state or municipality state-wide network credit.

existing education plan of a state or municipality⁴ be extended to those applicants whose stations would be part of an existing or proposed state-wide education network plan of a private educational entity.

Cedarville also supports the Commission's tentative conclusion that there be a "holding" period for NCE licenses awarded in any selection system ultimately adopted, but proposes that the holding period be set for a period equivalent of a complete license period of eight years,⁵ instead of the five-year period suggested by the Commission in the *Further Notice*. In addition, Cedarville submits that the sale of any NCE station, whether within the holding period or not, and whether awarded by lottery /point system or not, should be restricted to a recovery of legitimate and prudent expenses, as further specified below. Both the longer holding period and the profit restriction would comport with public interest goals and serve to further strengthen the integrity of the license grant process by insulating the preference mechanisms in place from speculators seeking profits. Cedarville also proposes a narrow exception to the eight-year holding period for licensees with certifiable financial burdens that preclude continued operation of a station.

⁴ *Further Notice* at ¶ 24.

⁵ See 47 C.F.R. §73.1020(a).

II. Applicants that are part of private educational entities' state-wide network plans should be entitled to the same credit as those that are part of state or municipality state-wide network plans.

The Commission should adopt a selection system which is ultimately designed to select the best applicant from among competing applicants and it should begin with an equitable set of factors which promote those attributes most likely to achieve the statutorily declared purposes of NCE broadcasting – education.

In this vein, Cedarville proposes that stations that are part of a state-wide network of private colleges or universities should be eligible for the same credit that stations that are part of state or municipality state-wide network plans would receive under the Commission's proposed state-wide network plan credit. The Commission's credit, as proposed, only applies to applicants whose stations are part of an existing state-wide education network plan of a *state or municipality*.⁶ Excluding applicants affiliated with state-wide network plans of America's private educational entities and institutions from qualifying for this credit unnecessarily eliminates an additional, very viable, noncommercial educational broadcast choice to the public. Indeed, as compared to state financial mechanisms supporting state-wide networks, which often depend on uncertain governmental and private funding from year to year in order to construct and operate stations, private educational entities often have a more reliable revenue stream that aids in timely completing construction of stations and commencing broadcast operations.

Expanding the credit to state-wide plans of private educational entities would

⁶ *Further Notice* at ¶ 24.

certainly not detract from the Commission's stated goals in identifying suitable criteria for selecting among competing applicants.⁷ First, a private educational entity seeking to effectuate a state broadcasting plan would be able, as easily as would a state or municipality, to document their intentions of establishing such a network⁸ by filing or having on file with the Commission a state-wide plan for NCE-FM stations, or by evidencing agreements with a consortium of NCE stations within the state for the airing of network programming. Second, such status would be difficult to feign, based on the documentation required by the Commission's rules. Finally, granting applicants credit for being part of state-wide broadcasting networks run by private educational entities, for educational purposes, would directly and verifiably further the public interest goal of a better mix of educational broadcasting choices.

Ultimately, recognizing applicants as eligible for a credit by virtue of being part of a private educational entity's state-wide network plan will result in more diverse programming, statewide, from a greater variety of sources, all educational in nature, designed to enable the public to be served by, and select from, statewide networks of private educational entities.

⁷ *Further Notice* at ¶ 23. The Commission specified that any additional criteria should be easy to document, difficult to feign, and directly and verifiably connected to furthering the public interest goal.

⁸ In Cedarville's case, its pending application for channel 218 in Columbus, Ohio, combined with its current operation of three other NCE-FM stations and several FM translators, as well as its filed state-wide plan for NCE-FM stations, would constitute verifiable evidence of such intent. Cedarville is currently in the process of filing an application for a Class A NCE-FM station in Wooster, Ohio, and plans to file for additional reserved channels for further expansion of its statewide network.

III. A Holding Period Equivalent to a full license term is needed to preserve the integrity of any preferential award of NCE licenses.

In the *Further Notice*, the Commission tentatively concluded that a holding period should be established during which NCE licensees would be prohibited from transferring licenses awarded by a lottery or a point system. The proposed holding period, which would commence from the start of on-air operations, is based on the Commission's belief that if applicants are to be selected on the basis of their different characteristics, those characteristics should be maintained for a minimum period of public service to be meaningful.⁹ The Commission asked for comments on the specific length for the holding period.

Cedarville proposes that for an NCE licensee to provide meaningful public service, it must conform to the characteristics submitted to the Commission for consideration when the license was originally granted for the equivalent of a full license term, currently defined by the Commission as eight years.¹⁰ Holding periods for less than eight years would simply not be meaningful in the context of public expectations of an NCE licensee. The public wants continuous and uninterrupted service from the licensee that was deemed best qualified to operate a broadcast station – not a merry-go-round of entities vying for profits that would inevitably lead to programming that is here today and gone tomorrow. The surest way to ensure such meaningful service is by making the holding period long enough to deter speculators from becoming involved in the process at all.

⁹ *Further Notice* at ¶ 30.

¹⁰ *See* 47 C.F.R. §73.1020(a).

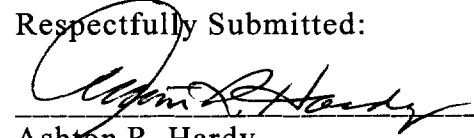
As an additional way of preserving the integrity of the preferential licensing process, Cedarville proposes that licensees, either during or after the holding period, be restricted in a sale of an NCE station awarded by lottery or point system to recovering only their legitimate and prudent expenses in applying for and constructing the station and for operating the station to the extent that the operating costs are not offset by the station or licensee's income. This "no-profit" rule will deter speculators whose interests lie in profiting from the sale of NCE-FM stations, rather than promoting the goal of noncommercial educational broadcasting. Indeed, Cedarville respectfully submits that the important educational purpose of the reserved spectrum warrants the extension of the proposed "no-profit" rule to all NCE licensees, whether awarded by lottery/point system or not.

Cedarville further submits that upon certification to the Commission, a narrowly construed exception to the holding period described above should be allowed for licensees who, due to financial constraints, cannot continue broadcast operations. In that case, the public would be better served by a new licensee stepping in to provide service before the end of the holding period. In this limited situation, Cedarville proposes that the Commission permit the sale price of the station to include, in addition to a recovery of legitimate and prudent expenses as outlined above, and to avoid having unsatisfied creditors left behind, the amount of any outstanding debt incurred in the operation of the station.

IV. Conclusion

As proposed, the current state-wide NCE-FM plan credit is unnecessarily limited to applicants that are part of a state or municipality's state-wide network plan. For the reasons identified above, applicants should be entitled to an equal credit for being part of a private educational entity's state-wide network plan. This, combined with an extended holding period and the no-profit restrictions outlined above, will further the educational purposes of noncommercial broadcasting and cull out undesirable profit seekers from the noncommercial licensing process.

Respectfully Submitted:



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Its Counsel

January 28, 1999

Exhibit A

THE CEDARVILLE COLLEGE
CEDARVILLE, OHIO

THE CDR RADIO NETWORK PLAN

INTRODUCTION

The Cedarville College (Cedarville) has been the licensee of broadcasting facilities since 1962. During the intervening years, Cedarville has developed a unique position among private institutions of higher learning within the state of Ohio and the United States. In Ohio, among the forty undergraduate members of the Ohio Foundation of Independent Colleges, Cedarville ranks fifth in enrollment. The Liberal Arts based curriculum, with emphasis upon traditional private enterprise and the perpetuation of historical national and spiritual values, has been important in the development of the institution. Broadcasting activities by Cedarville have kept pace with the unique qualities that have given the institution a state-wide and national reputation.

Cedarville owns and operates several broadcast stations which are linked via intercity relay audio circuits. This prevailing linkage has advanced the programming and operating identity: The CDR Radio Network (CDR).

The development of the FM broadcast facilities owned and operated by Cedarville and the linkage of the facilities by CDR, has actually been a process of implementing a de facto State-wide plan for broadcasting.

Therefore, Cedarville is submitting this plan in accordance with 47 C.F.R. 73.502 to formally establish its intentions to grow its FM broadcasting station and translator network, designed with a primary objective to serve the public of the State of Ohio.

HISTORY OF BROADCASTING BY CEDARVILLE COLLEGE

December 2, 1962 inaugurated the first broadcast facility owned and operated by Cedarville. WCDR-FM began as a 10 watt, Class D, noncommercial educational FM station. Several improvements have been made to the technical facilities of the station, culminating in 1988 with a power increase to 30 kilowatts. The power level produces a 60 dbu contour encompassing the Statistical Market Area of Dayton and Springfield, Ohio.

A FM Translator (FMT) permit and subsequently a license was assigned to serve the city of Richmond, Indiana. Since 1985, Cedarville has maintained the FMT with the direct assistance of community support for the programming service it provides.

Our operating policy has been to provide CDR service to a community upon a showing of support for the service. Support has been defined as advocacy, financial contributions and vision for the type of broadcasting CDR brings to the public. When adequate

elements of private support have been committed to the establishment and operation of a local broadcast station, Cedarville has moved to advance the effort by filing applications with the Federal Communications Commission for Construction Permits.

Additional FMT's were established at the request of community leaders. Chillicothe and Portsmouth, Ohio, began operating in 1986. Washington Court House and Wheelersburg, Ohio, FMT's went on the air in 1988 and 1989.

When the FCC Rules permitted and the finances were available, the studios of WCDR-FM were connected via InterCity Relay with each of the licensed facilities. The linkage provided reliable signal delivery and improvement of the audio quality received by the public.

When the FM Translator stations authorized by the Commission required several frequency changes, it became readily apparent the Secondary status of the FMT's and the InterCity Relay systems made the long term operation of the stations questionable at best. Therefore, Cedarville proceeded to upgrade the FMT's to Full Service facilities and the InterCity Relay systems to Primary status.

The upgraded Portsmouth station, WOHP, 88.3 MHz was inaugurated on February 13, 1992. Chillicothe, WOHC, 90.1 MHz went on the air on May 1, 1992. These Full Service stations replaced the Wheelersburg, Portsmouth, Chillicothe, and Washington Court House, Ohio FMT's.

The most recent effort by Cedarville has involved the establishment of FM radio service in Columbus, Ohio--the capital city of the state. In order to advance the effort, an FM Translator application was filed and approved in 1989. That station is expected to commence operation in October 1993. Cedarville submitted an application in November 1992, for a Construction Permit to build a noncommercial educational FM station on Channel 218A, a full-service facility to serve metro Columbus. Believing that a state network, whether regional or state-wide, needs to be able to communicate the influence and impact of Ohio's capital city to its listeners. Cedarville has advanced the Columbus full-service station application to position its service to the community and the other communities which are served by other Cedarville stations.

PRESENT STATUS OF BROADCASTING BY CEDARVILLE COLLEGE

All stations operated by Cedarville are recognized by leaders in their respective communities as broadcast facilities which contribute to and uphold the values that lend support to the cultural, moral, ethical, and spiritual values, essential to a healthy citizenry.

CDR provides programming twenty-four hours per day to all of the stations licensed to Cedarville. An emphasis is placed on the dissemination of news of international, national, regional and local significance.

Cedarville has provided easy access for citizens to communicate with its broadcast organization. A toll-free telephone number has been maintained for many years, thus allowing unimpeded access for listeners and any citizens.

PURPOSE FOR A STATE-WIDE BROADCASTING PLAN BY CEDARVILLE COLLEGE

Cedarville is formally proposing a State-wide plan to provide an organized and orderly means to continue the advancement of CDR. It has been the experience of Cedarville, that their current broadcast programming has provided a means of communications to segments of the public who share specific interests, goals and values. A communications system operating within the state can expand the effectiveness of such sharing of these commonalities, and in addition provide for alternative views via the schedule of daily interactive broadcasts.

FUTURE PLANS FOR BROADCASTING BY CEDARVILLE COLLEGE

Several cities within the state of Ohio are being reviewed as potential localities where CDR can provide a viable service for the community. Cedarville may advance to file applications for FM full service or translator stations where leadership within the communities have led the way to establish the service.

The following Ohio cities have been identified as potential localities for future linkage via CDR with either Full Service or Translator noncommercial educational FM stations: Athens, Cincinnati, Hillsboro, Kenton, Marion, Marysville, Newark, and Sidney. Cedarville proposes to consider, including these and other potential cities, in its plan to provide CDR programming in the state. Audio circuit linkage will be routed according to the most cost efficient and quality effective means practicable.

For a citizenry to be well informed in a democracy, it is essential the functions and decisions of State government be known and communicated to the public. Cedarville will plan to establish an office for the purpose of reporting the official activities of state government. It is believed this office will enable CDR provide relevant and timely information of interest to the constituents of the law and policy makers. A broadcast station in the State Capital is important to Cedarville's ability to maintain a more complete process of communication to the community and government officials who converge there from the constituent regions CDR serves.

FINANCIAL SUPPORT FOR BROADCASTING BY CEDARVILLE COLLEGE.

The ability to implement the plan as described requires sufficient funding to capitalize and operate the facilities. The history of Cedarville's development of broadcasting facilities demonstrates the future means of proposed funding. Private sources, ie. listeners, business and foundations will continue to be the constituents who fund this state-wide broadcasting proposal. When reasonable assessments indicate viability, local leadership prevails and adequate funding is available, the process for the proposed sites could be advanced.

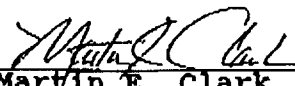
PUBLIC BENEFITS DERIVED THROUGH BROADCASTING BY CEDARVILLE COLLEGE

Cedarville through its broadcasting stations, brings a totally unique schedule of programs to the public. An integral component of daily broadcasting activities are up to to three and one half hours of interactive programs that allow listeners to participate directly via 800 telephone numbers. Two hours of same day and often LIVE broadcasts, produced locally, continues to be a mainstay in the schedule.

By use of a continuing assessment of needs in the communities we serve, CDR personnel endeavor to target programming, regular scheduled and daily interviews toward addressing those needs. Cedarville possesses unique resources for addressing issues of local, regional, national, and international significance. As demonstrated by its past record of broadcasting service, Cedarville has used those resources to the benefit of the public.

CONCLUSION

Cedarville College through its existing broadcasting facilities has established a de facto State-wide broadcast network, as defined in 73.502. The State of Ohio is well endowed with broadcasting facilities licensed to State owned and operating entities. Cedarville presents this State-wide Plan to formally establish its intent to maintain a network of FM broadcast stations in Ohio and its desire to be provided fair treatment, as a private educational entity not using government funds for its activities in allocation proceedings as provided for in the Rules and Regulation under 47 C.F.R. Sec. 73.502.



Martin E. Clark
Vice President For Development
The Cedarville College

Date: 3/22/93